

**EXHIBIT**  
**A - Part 1**

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY - CIVIL TERM - PART 3

-----X  
RICHARD DAVIMOS, JR.,

PLAINTIFF ,

-against-

JOHN HALLE,

DEFENDANT

-----X

Index No. 111013/02  
Proceedings

60 Centre Street  
New York, New York  
May 15, 2013

B E F O R E:

HONORABLE EILEEN J. BRANSTEN,  
Justice

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Angela Bonello, RPR, Sr. Court Reporter

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2  
3 THE COURT: All right, I have before me the matter  
4 of Richard Davimos, Junior against John Halle. For the  
5 plaintiff Richard Davimos, Junior, I have Damian J.  
6 Pietanza.

7 MR. PIETANZA: That's correct, Your Honor.

8 THE COURT: And assisting but not admitted to  
9 practice law in the State of New York is Karam Nahas.

10 MR. NAHAS: Yes, Your Honor, that's correct. Good  
11 afternoon.

12 THE COURT: Good afternoon. Are you planning to be  
13 admitted pro hoc vice?

14 MR. NAHAS: Not at this time, maybe down the road.

15 THE COURT: Then sit down and don't have anything to  
16 do with this.

17 MR. NAHAS: Yes, Your Honor.

18 THE COURT: Because if you want to talk you have to  
19 be admitted pro hoc.

20 MR. NAHAS: I understand, Your Honor, thank you.

21 THE COURT: Then for John Halle, I have from the  
22 law firm McLane, Graf, Raulerson & Middleton, from  
23 Manchester, New Hampshire, are you admitted to practice law  
24 in the State of New York?

25 MR. HARRIS: I am.

26 THE COURT: You are Thomas Lancia?

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MR. HARRIS: I'm Scott Harris.

MR. LANCIA: I'm Thomas Lancia.

THE COURT: And you are from?

MR. LANCIA: My own firm, Thomas Lancia, PLLC.

It's my own firm.

THE COURT: What's your address?

MR. LANCIA: 22 Cortland Street.

THE COURT: Yes, I see it.

MR. LANCIA: I'm sorry for the sloppy handwriting.

THE COURT: And Mr. Harris is from Manchester, New Hampshire. Are you admitted to practice law in the State of New York?

MR. HARRIS: I am, Your Honor.

THE COURT: All right, good. So, you're an attorney in good standing in New York?

MR. LANCIA: I checked.

THE COURT: All right, good, I'm glad you checked that way I don't have to worry about it.

All right, it is the Halle's motion. These papers are really, they are totally up to snuff, Commercial Division style. What we have here is basically the order to show cause telling the plaintiff Richard Davimos to come to Court so I can vacate my judgment. It is a disgrace, all right. It fell apart on me, you'll be glad to know I had to put it back together for you guys. So you know paper clips

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1  
2 don't do it, backs do do it in the State of New York. If  
3 you're printing papers or you're giving courtesy copies  
4 indexes are very important. You do have indexes, so that is  
5 good and I'm glad that both of you realize that at least in  
6 this part I definitely like table of contents and table of  
7 authorities.

8 So, we have that, the proposed order to show cause,  
9 and this supported I read these papers this morning  
10 supported by the full transcript of the bench trial that  
11 occurred before Justice Karla Moskowitz, followed by, we had  
12 the legal service bill, followed by my-- this is me being  
13 Eileen Bransten, memoranda, decision on the bench trial, a  
14 written decision followed by at Exhibit K the Appellate  
15 Division First Department's affirmance of my decision;  
16 right?

17 MR. HARRIS: Right.

18 THE COURT: Now, by the way, just so we get some  
19 time table here, that decision by the First Department is  
20 dated March 31st, 2009. This is 2013 so four years have  
21 gone by, four years and basically six weeks, right, I just  
22 want to make sure I get that right.

23 The claim to vacate the decision is based on, I  
24 didn't get the impression it was newly found, but, certainly  
25 newly claimed, that's maybe what the proper word is, newly  
26 claimed perjurious testimony; am I correct on that?

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MR. HARRIS: Correct.

THE COURT: Tell me where, what and when the perjurious testimony occurred.

MR. HARRIS: At trial, Your Honor.

THE COURT: At the trial?

MR. HARRIS: At the trial.

THE COURT: Where? Show me, give me the page number.

MR. HARRIS: So, Your Honor, we've by way of context, Your Honor, the case rested on a question of whether this was a continuing guarantee or not. And so, if you take a look at the first Appellate Division decision --

THE COURT: Then Justice Moskowitz, and by the way Justice Moskowitz is not here, the first occurred in 2007, you then went to a trial after the 2007 reversal and then you went to trial and that occurred on November 26, 2007. Then, everybody should be happy to know, approximately December 20th of 2007, I believe it was Governor Patterson appointed Justice Moskowitz to be a Justice of the Appellate Division First Department. So that's exactly what she did. So she spent the intervening period of time, you'll be happy to know, all of her happy holidays that everybody else was galavanting around, she was here writing as much as she could. But the one thing she couldn't get to and she didn't know if she had a complete record was indeed the decision

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after trial based on the trial transcript.

So, go ahead.

MR. HARRIS: So, the critical issue at trial was whether or not the guaranty was with respect to a loan. And the reason that I point to the first Appellate Division decision is because it framed what the question was, the critical question and it framed it as follows: "Whether the unpaid note is the one referred to in the guaranty and whether the loan terms were changed or replaced in such a manner that the deal was never consummated and the guaranty rendered null and void." So the critical question at trial was --

THE COURT: By the way you are admitted to practice; right? Okay go ahead.

MR. HARRIS: The critical question at trial was, Your Honor whether this loan that was guaranteed in December of 2007 was changed materially thereafter and the way that the plaintiff sought to get around that is the testimony that I am about to refer you to, that we've referred you to in the motion, and that is that because the loan was renegotiated with Mr. Davimos's counsel and not executed until four months after the guaranty was signed, the way that the plaintiffs dealt with that is to say, well, it was John Halle who was responsible for all aspects of the architecture of this loan and advising the plaintiff as to

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2 its terms and conditions.

3 That simply wasn't true, Your Honor, and the --

4 THE COURT: But sir, that was known to Mr. Halle  
5 at the time that he was here and testified at trial. And it  
6 was known to Mr. Halle at the time that the Court rendered a  
7 written decision in 2008. And it was known to Mr. Halle  
8 whatever his claims are, nothing has changed from that  
9 particular time to when indeed the argument was had before  
10 the Appellate Division, and had there been any claim that  
11 there was misrepresentation could have been said at that  
12 time because they do listen to that kind of argument and  
13 indeed, it was found that Mr. Halle didn't raise it. Either  
14 he knew about it and didn't raise it or decided it wasn't  
15 important, whatever his decision was.

16 MR. HARRIS: He knew, because he knew what he said  
17 to the plaintiff. What he didn't know is that he had the  
18 ability to prove that what Mr. Davimos was testifying to was  
19 false. The billing records of Henry --

20 THE COURT: Sir, sir, I really -- you know, this  
21 Court does not redo things, all right. There's nothing, I  
22 mean, Mr. Halle had an opportunity to testify, am I correct,  
23 at the trial?

24 MR. HARRIS: He did, yes.

25 THE COURT: And he certainly had the opportunity to  
26 be redirected after the cross examination of Mr. Halle;



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right?

MR. HARRIS: What he couldn't show, though, Your Honor, is that because Mr. Davimos was saying it is Mr. Halle who told me about this transaction. The fact is Mr. Davimos was told about the transaction by his lawyer, and when Mr. Halle tried on cross examination to --

THE COURT: But wait a second, wait a second. Mr. Halle was told of this transaction by his lawyer. Who was his lawyer, at that time?

MR. HARRIS: Mr. Davimos was told about the transaction by his lawyer.

THE COURT: By his lawyer, so --

MR. HARRIS: Because that is, that was the crux of why it was -- because Your Honor, if Mr. Halle is the one whose telling Mr. Davimos about the transaction, if Mr. Halle is the one who is the architect of the transaction, then the Courts, the trial Courts and the Appellate Division's decision which was that this was an integral, uniform transaction is supported because Mr. Halle would have had to have known about the change in the terms and the conditions. And so, it was the same loan then that Mr. Halle guaranteed. View it otherwise, though, Your Honor, let's just assume that it is --

THE COURT: Isn't it a fact that Mr. Halle really doesn't want to have to pay the judgment that's against him?



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1  
2 Isn't that the issue; isn't that really the issue that in  
3 fact there's a statement in here, this doesn't go forward he  
4 may have to declare bankruptcy?

5 MR. HARRIS: He's not declaring bankruptcy, Your  
6 Honor.

7 THE COURT: Not now because he thinks he's going to  
8 win on this.

9 MR. HARRIS: He's an investment banker so he's not  
10 declaring bankruptcy.

11 THE COURT: Good, then maybe he will have to pay the  
12 judgment.

13 MR. HARRIS: So, Your Honor, you asked me  
14 originally so where is the testimony that's perjurious. The  
15 critical question was whether Mr. Halle engineered the  
16 transaction or whether this transaction was --

17 THE COURT: So show me the perjurious statement and  
18 statements, cross examination, direct, cross examination and  
19 redirect.

20 MR. HARRIS: So the cross examination was cut off  
21 because when Mr. Halle's counsel endeavored --

22 THE COURT: That was for the argument to be made at  
23 the Appellate Division: I didn't have a chance, they had to  
24 produce by evidence, Justice Moskowitz cut me off and I  
25 didn't have an opportunity. So come to me with that.

26 What is the perjurious statement?

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MR. HARRIS: If you look at page 50 of the transcript, which appears at tab G there's a question.

THE COURT: Right here, where?

MR. HARRIS: Line six.

THE COURT: Its says:

"QUESTION:-- this is cross examination of the defendant Mr. Davimos by which lawyer?

MR. HARRIS: By Mr. Sullivan who was Mr. Halle's counsel at the time.

THE COURT: Right, Mr. Sullivan was hailed from New Hampshire, Exeter, New Hampshire and you hail from where?

MR. HARRIS: Manchester.

THE COURT: Manchester, New Hampshire.

MR. HARRIS: Yes.

THE COURT: Is that far away from each other?

MR. HARRIS: Not particularly, 20 minutes.

THE COURT: Do you know Mr. Sullivan personally?

MR. HARRIS: I do.

THE COURT: And have you discussed it with Mr. Sullivan?

MR. HARRIS: I have discussed this case at length with him, yes.

THE COURT: You have, good.

Page 50, line six;

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"QUESTION: So, how do you know what the terms of the deal was?

"ANSWER: I know exactly what John Halle told me.

"QUESTION: You knew nothing else?

"ANSWER: Nothing else.

"QUESTION: Nothing from your lawyer?

"ANSWER: Nothing.

"QUESTION: Nothing?

"ANSWER: Nothing.

"QUESTION: Nothing from Gerald Green?"

Who is Gerald Green?

MR. HARRIS: He was the principal of the phone development company that is at issue.

THE COURT: All right, continuing:

"ANSWER: Nothing.

"QUESTION: He didn't send you letters?

"ANSWER: There were no letters and I would never -- I would never have seen before I sent money regarding the terms of the deal."

And it goes on. So that's the critical thing; right?

MR. HARRIS: Yes.

THE COURT: Anything else?

MR. HARRIS: Well, I think you need to pair that, to understand why we believe that that's perjurious, you need



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to look at Exhibit H and Exhibit C because --

THE COURT: Exhibit H is the time table from the law firm of the Weissman, Wolff, Bergman, Coleman & Silverman and there we have legal services rendered through December 31, 1999, and it goes on and on.

And what do you want me to see there?

MR. HARRIS: So, Your Honor, the contention is that Mr. Davimos learned about and understood this transaction solely from Mr. Halle. It's important, because if --

THE COURT: I got that. What do you want me to see here?

MR. HARRIS: So, if you look at the bottom of the page.

THE COURT: Which page, the first page?

MR. HARRIS: First page, yes, 12/14/99 is the entry.

THE COURT: Right.

MR. HARRIS: It says: "Reviewed agreements, telephone calls to and from Richie Davimos, telephone call to John Davimos, Henry Holmes." Then if you look on the second page there are four entries that refer to the same type of conduct, review of the documents.

THE COURT: And that, you think makes it perjurious?

MR. HARRIS: There's more, Your Honor. So the loan documents are all reviewed, and then on March, in March there's an entry.

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THE COURT: When did you get hold of this document, sir?

MR. HARRIS: This was FAXed to CMC Capital in the year 2001 and it was capped with all of the FAXes that came in and we discovered it last August.

THE COURT: Good, but it was a available to you had you made a demand for that kind of documents prior to the trial; am I correct on that, yes or no? Yes or no?

MR. HARRIS: Technically, yes. Technically yes, except they were claiming attorney-client privilege, Your Honor so.

THE COURT: But you did not --you didn't say, you know, look, this is a, there's no doubt in reviewing the documents this involves the financing of a movie deal and people knew each other and they knew each other fairly well. In fact, there was no doubt that John Halle wanting money from Richard Davimos, Junior sent him a million dollars, and on a basis of friendship, mind you, certainly knew that John Davimos to the degree that he knew, in fact he did ask for attorney, the attorney records. And you have, if you thought there was that kind of interplay between the partner Henry Holmes and Mr. Davimos, certainly, a question either before or anytime and saying, you know, where is Mr. Holmes, I would like to talk to Mr. Holmes because Mr. Holmes may have been involved in this. You didn't do that.

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MR. HARRIS: But Your Honor, again, in 2000 -- that was not an issue until Mr. Davimos testified falsely.

THE COURT: No, it was not -- sir, you know, that goes to credibility. Let's assume for a second that in 1997, right, I had a conversation with my lawyer, it happens, I'm entitled to have a conversation with my lawyer; right?

MR. HARRIS: Absolutely.

THE COURT: And that's an attorney-client relationship. Now, let's fast forward, so that is in 1999 -- was it 1999? Let me see, yes, 1999. In December of 1999 practically 2000, seven years later I'm on the witness stand and a lot of things are going on since then, many, many discussions, many, many, many motions, many, many things have happened and now I'm questioned.

I have to take this phone call, excuse me. I'll go in the back.

(Whereupon, a brief recess was taken.)

(Record resumed.)

THE COURT: Thank you. Please be seated. I'm sorry.

MR. HARRIS: You were asking me about if --

THE COURT: Right, so now basically seven years later I'm now on the witness stand and somebody asks me did you have any conversations, and I say no, I didn't, it's on



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the same topic, but no, I didn't and that could very well be his memory. And had you brought up, you mean that you didn't, you know, didn't you talk to so and so; that would have gone to his credibility, but it would not go to a perjury. Yes, he was under oath, but that is something that goes to his credibility and not to a material fact in the matter.

MR. HARRIS: But we differ of course, Your Honor.

THE COURT: I know we do.

MR. HARRIS: But it's, you know, and from our perspective, though, it's a critical fact and that is that it is material --

THE COURT: It is material now that it's another five years.

MR. HARRIS: But, you see, the question isn't did you have a conversation. The question is very specific and actually it starts, this series, this exchange starts on page 48. I won't bother you with reading it line by line but they ask Mr. Davimos about his representation by counsel, so that doesn't just come out of the blue.

And the question on page 48, line ten is:

"QUESTION: Let me ask you again, all right, it's an easy question. Yes or no, did Henry Holmes, the lawyer in California right, did he represent you?

"ANSWER: Yes.

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